

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RAYMOND FRAZIER,	:	
Petitioner,	:	Case No. 3:11cv00419
vs.	:	District Judge Timothy S. Black
		Magistrate Judge Sharon L. Ovington
WARDEN, Lebanon Correctional Institution,	:	
	:	
Respondent.		

ORDER

This case is presently before the Court upon Respondent’s Motion to Strike Petitioner’s Reply (Doc. # 11), and the record as a whole. Respondent “respectfully moves the Court to strike Petitioner’s ‘Reply to Respondent’s Response to Petitioner’s Motion for an Evidentiary Hearing’ because it was not timely filed and Petitioner has not properly requested leave of court to file the motion.” (Doc. # 11 at 1).

Respondent argues that “Petitioner’s Reply was due January 4, 2012, but Petitioner did not file his Reply until January 30, 2012.” (*Id.* at 2). While Respondent is correct that Petitioner’s Reply was due January 4, 2012, but not entered on the docket until January 30, 2012, Petitioner’s Reply was nonetheless filed timely because of the “prison mailbox rule,” as established in *Houston v. Lack*, 487 U.S. 266, 270, 101 L. Ed. 2d 245, 108 S. Ct. 2379 (1988). See *Towns v. United States*, 190 F.3d 468, 469 (6th Cir. 1999) (“In *Houston*, the Supreme Court held that a prisoner’s notice of appeal will be deemed timely filed if it is delivered to the proper

prison authorities for forwarding to the district court within the time allotted for an appeal. At least three circuits have extend the rule of *Houston* either to all prisoner mailroom filings in general or to objections to magistrate judges' reports.") (internal citations omitted); *see also Lyons-Bey v. Pennell*, 93 Fed. Appx. 732, 733 (6th Cir. 2004) (Prisoner's response to motions to dismiss deemed filed when given to prison officials).

In this case, Petitioner's Certificate of Service indicates his *pro se* reply was mailed to Respondent on January 3, 2012. (Doc. #5 at 5). Absent evidence to the contrary, Petitioner's Reply is deemed filed as of this date. Accordingly, it is therefore ORDERED that Respondent's Motion to Strike Petitioner's Reply (Doc. # 11) is DENIED.

February 6, 2012

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge